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United States
Coast Guard



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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL WILLIAM D. BAUMGARTNER

ON THE

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

JUNE 20, 2006

INTRODUCTION

Good morning. Thank you for the opportunity to appear before the Subcommittee to testify on the Administration proposal, the “Coast Guard and Maritime Transportation Act of 2006.”

Before turning to the Administration proposal, I wish to express the Coast Guard’s gratitude for the Congressional response to our request for emergency powers in the wake of Hurricanes Katrina and Rita. The Coast Guard Hurricane Relief Act of 2005 (Public Law 109-141) provided much needed temporary authorities, and the speed with which Congress acted was truly appreciated.

As you know, some of these emergency powers expired February 2006, and the replacement permanent authorities are found in H.R. 889. Moreover, other authorities that would enhance the Coast Guard’s capacity to respond to disasters (section 206 – Reserve recall authority), protect the marine environment (title VI—Delaware River Protection and Miscellaneous Oil Provisions), and secure the Nation’s maritime borders (section 201 – Extension of Coast Guard vessel anchorage and movement authority; section 303 – Certification of nationality in drug smuggling cases) are found in the conference report. The Commandant appreciates the Subcommittee’s work on H.R. 889 and looks forward to implementing these provisions once they become law.

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006

I want to acknowledge this Subcommittee’s tradition of taking up a Coast Guard authorization act each year and its willingness to address the challenges facing the Nation. Such reflects the understanding that the strategic environment in which the Coast Guard operates has dramatically changed in the past five years and continues to evolve. Such also reflects an understanding that the Coast Guard must continually adapt and, where current law impedes this necessary adaptation, that Congress must address those barriers each year.

On February 28, the Commandant transmitted the Administration proposal, the “Coast Guard and Maritime Transportation Act of 2006.” The proposal would authorize the funds and end strengths requested in the President’s fiscal year 2007 budget. Additionally, it would provide important new authorities, as well as expand and clarify existing authorities. Of these authorities, four warrant particular attention:

- Section 205 – Merchant Mariner Credentials;
- Section 202 – Technical Amendments to Tonnage Measurement Law;
- Section 403 - Maritime Alien Smuggling Law Enforcement Act (MASLEA); and
- Section 401 – Maritime Drug Law Enforcement Act Amendment on Simple Possession.

The remaining provisions would address issues, ranging from uses of the Oil Spill Liability Trust Fund (OSLTF) to the well-being of Coast Guard members.

Section 205 – Merchant Mariner Credentials

The events of September 11th made clear that the Nation must take more care in controlling who is able to secure and use government-issued forms of identification. The 9/11 Commission, which noted that the September 11th hijackers obtained and used government-issued identification cards, such as driver’s licenses, recommended that forms of identification be made more secure.

Congress partially addressed this deficiency through section 70105(b)(2)(B) of the Maritime Transportation Security Act of 2002, which requires merchant mariners to have a Transportation Worker Identification Credential (TWIC).¹ Additionally, merchant mariner credentials, commonly known as licenses or merchant mariner documents, now include new and improved security and anti-counterfeiting features. Notwithstanding these initiatives and improvements, amendments to the statutes pertaining to merchant mariner credentials are necessary.

The Coast Guard first proposed amendments to the statutes in calendar year 2005. In response to the Subcommittee's direction concerning that legislative initiative, the Coast Guard conducted an extensive public outreach effort, including a public meeting and a public docket to collect comments on the proposal. Moreover, the Coast Guard held a series of one-on-one meetings with stakeholder groups to identify concerns with the initiative and gather feedback.² The Coast Guard also consulted with a working group of the Merchant Marine Personnel Advisory Committee (MERPAC).

Section 205 is the culmination of this public outreach. It now reflects some 75 pages of public comment and ten out of eleven recommendations of the MERPAC working group. Many changes have been made. For example, protections were added for innocent mistakes, such as a "safe harbor" provision for applicants and current holders who inadvertently forget to disclose material information. Additionally, it protects those who assist others applying for a credential from civil penalties. (The Coast Guard rejected only one MERPAC working group recommendation to shorten the look-back period for drug convictions from ten years to five.). Section 205 also includes—

- Providing much clearer statutory language. Existing statutes have developed piecemeal over the last 50 years, with no significant revision in over 20 years. As a result, the statutes are unclear, self-contradictory and, in some cases, obsolete. Section 205, if adopted, would render the statutes easier for mariners to understand.
- Taking into account the findings and recommendations of the 9/11 Commission regarding the importance of preventing terrorists from obtaining government-issued identification cards.

Finally, the suspension and revocation chapter would allow for immediate temporary suspension of a merchant mariner credential when a mariner is involved in an accident involving death or serious injury, and there is probable cause to believe the mariner was at fault. To ensure fairness to, and protect the rights of, merchant mariners, the amendments would also explicitly address an applicant's appeal rights, including the right to recover attorney fees if a credential is wrongfully denied.

Section 202 – Technical amendments to tonnage measurement law

¹ The Coast Guard has been working with the Transportation Security Administration (TSA) to implement the TWIC and recently published a NPRM at 71 Fed. Reg. 29395.

² The following organizations participated in the stakeholders meetings: American Maritime Officers, American Waterways Operators; Passenger Vessel Association; American Pilots Association; Offshore Marine Service Association; International Organization of Masters, Mates and Pilots; Seafarers International Union; Sailors' Union of the Pacific; Marine Firemen's Union; and Marine Engineer's Beneficial Association.

Section 202 is another provision where the Coast Guard consulted with industry and labor groups. It would eliminate conflicts and inconsistencies in statute, strengthen tonnage requirements for foreign flag vessels, and incorporate clarifications and administrative updates and corrections. Existing tonnage law is difficult to apply to some categories of U.S. flag vessels and can create loopholes for certain foreign flag vessels. Significantly, section 202 would:

- Remove conflicting language that suggests a U.S. flag vessel is ineligible for regulatory measurement if it was measured under the convention measurement system at the request of the owner.
- Remove conflicting language that suggests that only existing vessels are eligible for tonnage grandfathering under international agreements and laws of the United States.
- Eliminate inconsistencies in the measurement treatment of documented and undocumented U.S. flag vessels in favor of extending mandatory convention measurement to some undocumented vessels and allowing all undocumented vessels to be assigned optional regulatory tonnage.

Section 403 – Maritime Alien Smuggling Law Enforcement Act (MASLEA)

During FY 2004 and FY 2005, over 840 maritime smugglers facilitated or attempted to facilitate the illegal entry of aliens at an estimated profit of \$13.9 million. Yet, during the same period, less than three percent of interdicted maritime smugglers were prosecuted.

This low rate of prosecution may be surprising to some. Yet, it is largely the result of current law, which was not designed for the unique aspects of extraterritorial maritime law enforcement operations. Due to the manner in which the elements are set out in existing statute, the Government is unable to prosecute the crew or others involved. In turn, there is little deterrent effect, and the smugglers consider such occasional prosecution a cost of doing business in the highly lucrative trade of smuggling.

Section 403, which is modeled after the highly successful Maritime Drug Law Enforcement Act (46 U.S.C. App. §§ 1901-1904), would address the specific shortcomings of existing law that impede the prosecution of maritime smugglers. It would enable the United States to improve the security of the maritime borders against unlawful entry by those who seek to enter the United States without official permission or lawful authority and to prosecute maritime smugglers.

Section 401 – Maritime Drug Law Enforcement Act Amendment on Simple Possession

Section 401 would establish a civil penalty offense and process that will serve as an effective deterrent to the simple possession of narcotics aboard vessels subject to the jurisdiction of the United States. The provision is intended to deliver meaningful, yet measured, consequences for illegal and often unsafe conduct in the maritime domain; in no way is the measure intended to lessen the criminal laws already in effect or condone possession or use. Rather, this new civil penalty offense adds a practical alternative when criminal possession is not efficient, complements the existing laws and provides a means to effectuate congressional intent to prohibit possession of controlled substances.

Various Coast Guard Personnel Authorities

The Administration proposal includes other important provisions directed at improving the lives of our uniformed men and women. One such provision would allow service members to retain leave they would otherwise forfeit due to support of major disasters or other emergencies. Another would make permanent the Coast Guard's current housing authorities, which are scheduled to expire on October 1, 2007, thereby permitting the Coast Guard to continue to meet the housing needs of its members. Yet another would permit the Coast Guard to reimburse travel expenses that member, who are stationed on an island, must incur when accompanying dependents to specialty-care providers who are located on the mainland. I believe such provisions are extremely important because they can only enhance a service member's focus on the mission by minimizing or even eliminating such quality-of-life distractions as a loss of earned leave, quality of housing, or unexpected financial burdens.

CONCLUSION

Whether responding to a natural-disaster or performing one of its many other missions, the Coast Guard prides itself on its ability to provide outstanding service to the Nation. However, in order to remain effective, the Coast Guard must possess the necessary authority to perform as expected when called upon to execute any of its varied missions. The provisions before the Subcommittee will ensure the Government remains responsive and I urge you to consider them.

Mr. Chairman, thank you again for the opportunity to appear before the Subcommittee today. I will be happy to answer any questions.